

COMMISSION ON JUDICIAL SELECTION

APPLICATION

**EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT 29**

By

Esther C. Rodriguez, Esq.

(Insert applicant name)



**SECTION I: PUBLIC INFORMATION
(QUESTIONS 1 THROUGH 47)**

Personal Information

1. Full Name:

Esther Christine Rodriguez

2. Have you ever used or been known by any other legal name (including a maiden name)?
NO If so, state name and reason for the name change and years used.

3. Work Address:

10161 Park Run Drive, Suite 150; Las Vegas, Nevada 89145

4. How long have you been a continuous resident of Nevada?

Since July 1997, or 19 years.

5. Age: 50 years

(NRS 3.060 states that a district judge must be at least 25 years old.)

Employment History

6. Using the format provided in Attachment "A" please start with your current employment or most recent employment, self-employment, and periods of unemployment for the 20 years immediately preceding the filing of this Application.

Completed at **Attachment "A"**

Educational Background

7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.

STANFORD UNIVERSITY, Palo Alto, CA,
Master of Arts, Latin American Studies, June 1989
Honors Received: Stanford Academic Fellowship Recipient

PRINCETON UNIVERSITY, Princeton, NJ

Bachelor of Arts, Politics, June 1988

Honors Received: Certificate of Proficiency in American Studies;

Certificate of Proficiency in Latin American Studies;

National Hispanic Scholarship Recipient; Southland Corporation Scholarship Recipient

JOHN MARSHALL HIGH SCHOOL, San Antonio, Texas

High School Diploma, 1980-1984

8. Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.

At Princeton University, I held positions of leadership in my “residential college” which was Forbes College housing as a freshman and sophomore; as well as in my upper classmen “eating club” which was the Princeton Tower Club as a junior and senior. I participated in Outdoor Action which was the outdoor/environment group, as well as the Latino Caucus. I also participated in various intramural sports including tennis, fencing, and softball.

In high school, I was president of the National Honors Society. I held various offices in Student Council throughout my years, and was active in a number of extracurricular activities and leadership positions. I was a member of the tennis team.

9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.

TULANE LAW SCHOOL, New Orleans, LA

Juris Doctor, May 1997, Common Law and Civil Law curriculum.

I do not have knowledge as to my rank.

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.

Yes, I worked at the following positions during law school:

LOUISIANA FOURTH CIRCUIT COURT OF APPEAL, New Orleans, LA

Law Clerk for Judge Denis A. Barry, August 1996 – May 1997

Researched appeals for Judge, and prepared opinion recommendations. This was a part-time position.

BREAZEALE, SACHSE & WILSON, LLP, Baton Rouge, LA

Summer Associate, June – August 1996

Assisted multiple divisions of firm including employment and environmental division. This was a full time position during the summer.

ATLANTIC RICHFIELD CO. (ARCO), Los Angeles, CA

Summer Associate, Legal Department, May 1995 - August 1995

Assisted in all aspects of trial preparation of ADA case in Federal District Court. This was a full time position during the summer.

11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, extracurricular activities.

My primary activity in law school was participation in moot court. My team was able to advance to international competition held in Washington, D.C. I also participated in a legal aid clinic where I had an opportunity to intern with a New Orleans attorney assisting in family law matters.

Activities: Moot Court Honors Board 1996-1997

Pace Environmental Law Competition, Moot Court Team 1996-1997

Jessup International Law Competition, Moot Court Team 1995-1996

Selected as best brief writer in school-wide competition.

First Place Regional Championship Team, advancing to international competition

Law Practice

12. State the year you were admitted to the Nevada Bar. 1997

13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission. None

14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? If so, describe the circumstance, dates, and locations.

No

15. Estimate what percentage of your work over the last 5 years has involved litigation matters, distinguishing between trial and appellate courts. **For judges**, answer questions 16-20 for the 5 years directly preceding your appointment or election to the bench.

I estimate that 90% of my work is litigation. I estimate that at least 20% of my cases are appealed.

16. Estimate percentage of time spent on (1) domestic/family and juvenile law matters, (2) civil litigation, (3) criminal matters, and (4) administrative litigation.

I estimate that 70% of my time is spent on civil litigation; 30% is spent on administrative litigation. I do not handle domestic/family and juvenile law matters or criminal matters. I only address domestic/family law issues when they arise in matters I am assigned

through the State Bar Fee Dispute Committee, and the client has an issue against his/her lawyer.

17. In the past 5 years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials?

The majority of my litigation matters have been set for jury trials, with the exception of 1 bench trial which has not been set yet, and a few arbitrations. I am not speaking of my administrative litigation matters, which are set before State Boards or Panels.

18. Give the approximate number of jury cases tried to a conclusion during the past 5 years with you as lead counsel. Give the approximate number of non-jury cases tried to a decision in the same period.

None of my cases in the last five years have been tried to a conclusion. I have either resolved the matters prior to a conclusion; or prevailed on summary judgment. I have also had numerous matters tried to conclusion through administrative litigation including the Nevada Department of Administration (approx. 20); the State of Nevada Taxicab Authority (1); and the Employee Management Relations Board (1).

19. List courts and counties in any state where you have practiced in the past 5 years.

I have only practiced as an attorney in Clark County, Nevada. I serve as an Arbitrator for both the Eighth Judicial District Court, and the Second Judicial Court of Washoe County.

20. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), and list or describe:
- a. case name and date,
 - b. court and presiding judge and all counsel
 - c. the importance of each case to you and the impact of each case on you,
 - d. your role in the case.

Déjà vu Showgirls of Las Vegas, LLC v. Sky Top Vending, Inc., et.al., case no. A574136 originally filed October 22, 2008; Fourth Amended Complaint filed April 30, 2010 named my client. Department 11 of the Eighth Judicial District Court, Hon. Elizabeth Gonzalez. Plaintiffs' counsel was Neil Beller, Esq. There were numerous defense attorneys involved in matter on behalf of the other gentlemen's clubs, and the other taxicab companies in Las Vegas, including Dominic Gentile, Esq., Mark Trafton, Esq., and Marc Gordon, Esq. The importance of this case to me was that there were numerous defendants in this matter, with this being a large commercial case with millions of dollars in dispute. The Plaintiff sued nearly every competitor adult club, along with all the other taxicab companies alleging conspiracy and diversion. It is my understanding that every other defendant settled the case with Plaintiff despite maintaining that the case lacked merit. My client A Cab, LLC was able to prevail on summary judgment on February 28, 2013; and have the matter dismissed against it entirely. My client was very satisfied with the results, and I was proud of the accomplishment.

John Basil v. China Grill, LLC, et.al, case no. 540491. Complaint filed May 2, 2007. Department 11 of the Eighth Judicial District Court, Hon. Elizabeth Gonzalez. Defense counsel for China Grill was Scott Van Alfen, Esq.; and defense counsel for third party RCI, Inc. were James Rosenberger, Esq. and James Pico, Esq. This was a slip and fall case at the restaurant inside Mandalay Bay. This case affected me because after thoroughly preparing this case and commencing trial my client took the stand during the second day of trial. Unfortunately, Mr. Basil had a horrible seizure while on the stand testifying. The jurors were rushed out of the courtroom, and the Marshall's quick actions probably saved Mr. Basil's life. Emergency medical personnel arrived removing him by stretcher. Judge Gonzalez counseled all attorneys afterwards that people do not always realize the stress and strain of litigation, and the effects it takes on people's lives. These were wise words which I believe I had understood, but that day really burned the image in my mind of the importance of what happens in the courtroom.

Judy Westbrook v. Dollar Rent A Car, Inc., cv-s-05-0789 KJD-PAL. Complaint filed March 28, 2005, and removed to federal court. Hon. Kent Dawson was the presiding judge, and Hon. Peggy Leen was the federal magistrate. Defense counsel was Veronica Hall, Esq. of Littler Mendelson. This was an Americans with Disabilities action where my client had sustained substantial injuries from a failure to accommodate. It therefore was a hybrid between a complex employment matter and a personal injury matter against the employer. There was no precedence for this type of case, and no other attorney could be found to take on the matter. My client had consulted with several prestigious firms before finding me, and they had refused the case. Once I accepted the case, it was litigated aggressively for several years. Having recently opened my firm as a sole practitioner, it could be compared to David v. Goliath. The defense had seemingly unending funds and manpower. However, my staff was invaluable working as a team with the client to ultimately prevail in a resolution. The client was elated; and had we not resolved the matter, this case would have made new important case law and precedence in the employment arena. Judge Leen's clarity and communications on these issues facilitated a resolution. I am very proud of what my office accomplished for this client, when everyone else had rejected her request for assistance.

In the Matter Of Application of A-Cab for Modification of Certificate of Public Convenience and Necessity, Before the State of Nevada Taxicab Authority filed February 28, 2013. The matter was held before the Nevada Taxicab Authority, Chairwoman Ileana Drobkin. The majority, if not all, of the taxicab companies in Las Vegas opposed this application I filed on behalf of A Cab, LLC. Defense counsel included Marc Gordon, Esq., Mark Trafton, Esq., John Moran, Esq., Jason Awad, Esq., Neil Tomlinson, Esq., and Robert Winner, Esq. A Cab was the first company in several decades to obtain a Certificate of Public Convenience and Necessity in 2001. However, its license remained severely restricted, and the company was prohibited from servicing the more lucrative areas of the Las Vegas Strip, the convention center, or the airport. In November 2014, after prolonged litigation and a fierce battle, A Cab prevailed in having all of its restrictions lifted. I worked very hard for this client, but A Cab is now a fully unrestricted taxicab company serving all of the Las Vegas valley.

Tarango v. State Industrial Insurance System, 117 Nev. 444 (2001). Kimberly Wanker, Esq. was the attorney for the Respondent Champion Drywall; Javier Arguello, Esq. was the Attorney for EICON; and John Lavery, Esq. was the attorney for Amicus Curiae Nevada Contractor's Network Self-Insured Group. This was an important workers compensation issue which I briefed to the Nevada Supreme Court early in my career. I did not know at that time that the case would continue to be cited and relied upon not only in Nevada, but in other jurisdictions. The issue surrounds an undocumented worker's rights to benefits and to vocational rehabilitation. While the Court upheld the award of permanent disability benefits, I "lost" on the issue of vocational rehabilitation, as the Court ruled that the federal Immigration Reform and Control Act ("IRCA") of 1986 preempts the Nevada Industrial Insurance Act ("NIIA"). However, the Court's decision gave support for future workers' rights to all the other benefits when the worker sustains an industrial injury. I have continued to rely upon this case in seeking benefits for other clients, and I know that other attorneys have as well. There are currently other jurisdictions who have come to conflicting decisions than that reached in the *Tarango* matter. I therefore foresee that this issue may be revisited in Nevada or elsewhere.

21. Do you now serve or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience.

Pro Tem Judge, Justice Court (Clark County), January 2015 - Present

Court appointed pro tem judge over civil and criminal matters in Justice Court.

Arbitrator, 2nd Judicial District Court of Nevada (Washoe County), June 2010 - Present

Court appointed arbitrator over civil tort matters and contractual matters.

Arbitrator, 8th Judicial District Court of Nevada (Clark County), June 2010 - Present

Court appointed arbitrator over civil tort matters and contractual matters.

All of these experiences have encouraged me to apply for the District Court position. I have had the opportunity to interact with the Plaintiffs' bar and the Defense bar in both Clark and Washoe County and have learned much from my colleagues in terms of the different styles of preparation and presentation on behalf of their clients. My time serving as a Pro-Tem Judge shadowing Judge Yeager, Judge Zimmerman and Judge Cruz has been invaluable. These judges have shared a wealth of knowledge with me. Moreover, the experience allowed me an opportunity to interact with the public in very emotional and volatile circumstances, primarily dealing with evictions of persons from their homes. I believe I have handled the decisions fairly, and it has better equipped me to serve in the future.

22. Describe any pro bono or public interest work as an attorney.

Arbitrator/Mediator, State Bar of Nevada Fee Dispute Committee, 2005 – Present

I have handled multiple assignments from the State Bar for arbitration or mediation of fee disputes between members of the public and their attorneys. I enjoy serving on this committee,

as I believe it allows me to help restore public confidence and satisfaction with our legal profession.

I enjoy volunteering to assist the UNLV lawschool students' programs in trial advocacy including judging the Moot Court competitions. I have also previously served as a mentor in the Huellas Mentorship Program established at UNLV.

I volunteer my time and expertise to my church and fellow-parishioners. I currently serve on the Parish Council of St. John Neumann Roman Catholic Church. There is a large senior population who often have legal issues and inquiries; and I have been happy to assist numerous persons on a pro-bono basis.

23. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation.

Clark County Bar Association, member, 1997 to present
Nevada Justice Association, member, 2011- present
Southern Nevada Association of Women Attorneys, member, 1997 - 2005
Las Vegas Latino Bar Association, Board of Directors, 1999 - 2002
Princeton University Alumni Club of Southern Nevada, member, 1997 to present
Stanford University Alumni Club of Nevada, member, 1997 to present
St. John Neumann Roman Catholic Church, Parish Council, 2014 to present
American Bar Association Labor & Employment section, member, 2000 - 2003
American Bar Association Real Property section, member, 2000 - 2003
Las Vegas Latin Chamber of Commerce, member, 1999 - present
Defense Research Institute, member, 2001- 2008

24. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past 5 years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge?

Yes, I am in compliance with the CLE requirements. I have attended the following in the last 5 years:

The Law on Squatters presented through CCBA with Judge Saragosa 8/26/16
Mandatory Judge training on the bail release program; 8/19/16
Mediation Biases with Judge Glass presented through NJA 6/21/16
A Review of Supreme Court decisions through CCBA with Dan Polsenberg 5/26/16
State Bar Ethics of Law Practice Promotion 12/17/15
Get the Fee Dispute 411, State Bar 10/16/15
CCBA DVD Enforcing Judgments 5/31/15
CCBA DVD Don't be scared by the rules 5/15/15
CCBA DVD How to use a depo at trial 5/15/15
Probability, Coincidence & Causation in Injury Litigation, NJA 4/24/15
Cross Examination/Story Telling presented through CCBA 3/24/15
Psychology of Negotiations presented through CCBA 2/25/15
Deposition v. Root Canal presented through CCBA 2/5/15
Judge Pro-Tem training 11/14/14
How to Bring a Case to Trial presented through CCBA 9/25/14
Lawyers, Alcohol, drug addiction, State Bar 9/17/14
Women Warriors on Negotiation, NJA 4/24/14
Laying Proper Foundation, State Bar 3/28/14
The Law on Bailment, CCBA 2/12/14
Collecting Evidence through Online Surveillance, CCBA 2/6/14
Estate Planning for the Attorney, CCBA 2/5/14
CCBA DVD ProBono with Cam Fehrenbach 1/11/14
CCBA DVD Mediation training 12/29/13
CCBA DVD Drafting a bullet proof complaint 12/29/13
Q&A's with Magistrates Employment Discovery Issues, State Bar 9/12/13
Spine IME, CCBA 6/12/13
Workers Compensation Seminar on Occupational Diseases, 7/20/12
ADR Dealing with Emotions through Live Oak, 2012
Choosing a Jury through Live Oak, 2012
Advanced Mediation through Live Oak, 2012
Empirical Look at Negotiation through Live Oak, 2012
Ethics in Negotiation through Live Oak, 2012
CCBA DVD Pet Law 12/26/11
Spine issues with Dr. Cash, CCBA 10/14/11
Body Language with Dr. Jack Brown, CCBA 10/12/11
Social Security Disability Basics, 6/14/11
Arbitration after Moon case, CCBA 5/25/11
NV Court Annexed Arbitration, 5/6/11
E-filing seminar for Washoe County 2/2/11

25. Do you have Professional Liability Insurance or do you work for a governmental agency? I have Professional Liability insurance.

Business and Occupational Experience

26. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? If yes, please list, including the dates of your involvement with the occupation, business, or profession.

After obtaining my Masters from Stanford University, and prior to attending law school, I had other employment:

USAA INSURANCE COMPANY, San Antonio, TX, January 1991-August 1994

Senior Research Analyst/Corporate Trainer, November 1993-August 1994

Internal consultant for human resources department. Developed original corporate tools and policies and briefed senior executives with proposals. Benchmarked and cooperated with international corporations on a variety of Human Resources topics. Trained all 250 Human Resources employees on Quality Improvement philosophy.

Management Information Specialist, February 1993-November 1993

"Special Projects" person for Senior Vice-President. Conducted extensive demographic study of 14,000 employees at Home Office and six national field offices. End-product laid the foundation for workforce diversity policies and tracking of demographic trends.

Data Control Specialist, June 1992-February 1993

Trained and supervised unit of 10 analysts responsible for corporate database of employee record information including compensation calculations, performance evaluations.

Administrative Specialist, January 1991-June 1992

Coordinated Employment Department's \$2 million budget. Provided high level of expertise in computer technology to support 250 personnel. Designed copyrighted instrument to ensure company compliance with Americans with Disabilities Act.

TEXAS HOUSE OF REPRESENTATIVES, Austin, TX

Legislative Aide, September 1990 - January 1991

Tracked and drafted preliminary legislation for state representative. Involved in extensive public relations with constituents, lobbyists, and other government officials.

CITY OF LOS ANGELES, CALIFORNIA, Los Angeles, CA

Personnel Analyst, June 1989-August 1990

Conferred with top City management, labor unions, and organizations regarding workforce issues. Recruited, screened, and counseled approximately 400 applicants per month regarding employment opportunities.

27. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? If so, please provide details as to:
- a. the nature of the business,
 - b. the nature of your duties,
 - c. the extent of your involvement in the administration or management of the business,
 - d. the terms of your service,
 - e. the percentage of your ownership.

Since March 2004, I have had 100% ownership of Rodriguez Law Offices, P.C. This is a lawfirm, and I have full control over administration and management.

28. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership.

None

Civic, Professional and Community Involvement
--

29. Have you ever held an elective or appointive public office in this or any other state? Have you been a candidate for such an office? If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.

None

30. State significant activities in which you have taken part, giving dates and offices or leadership positions.

I currently serve on the Executive Council and as the Secretary for the Parish Council of St. John Neumann Roman Catholic Church, and have done so since 2014. I am active in my church in various ministries.

31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences.

I have previously lectured for Continuing Education on employment matters. I believe it was through Lorman Education services.

32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions.

I participated for several years in animal rescue organizations including Animal Network, and the Las Vegas dachshund rescue.

33. List honors, prizes, awards, or other forms of recognition.

A+ Rating, Better Business Bureau
Martindale-Hubbell Top Rated Lawyer in Litigation 2015
Certified Ethical Attorney, Attorney Guide

34. Have you at any time in the last 12 months belonged to or do you currently belong to any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.

No.

35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates.

None.

36. During the past 10 years, have you been registered to vote? Have you voted in the general elections held in those years?

Yes

37. List any vocational interests and hobbies.

Golf, travel, hiking.

Conduct

38. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges and dispositions.

No.

39. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? If yes, explain. If the disciplinary action is confidential, please respond to question 71.

No.

40. Have your ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? If yes, explain.

No

41. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? If yes, explain.

No.

42. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain.

No.

43. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest?

No.

Other

44. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result.

No.

45. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what particular education, experience, personality or character traits you possess or have acquired that you feel qualify you as a good district court judge. In so doing, address both the civil (including family law matters) and criminal processes (including criminal sentencing.)

Please see attached response entitled "Response to Question 45."

46. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.

Nothing further. I thank you for your consideration of my application.

47. Attach a sample of no more than 10 pages of your original writing in the form of a decision, "points and authorities," or appellate brief generated within the past 5 years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.

See Defendant A Cab, LLC's Motion for Summary Judgment filed in *Déjà vu Showgirls of Las Vegas, LLC v. Sky Top Vending, Inc., et.al.*, case no. A574136.

- - INSERT PAGE BREAK HERE TO START SECTION II
(CONFIDENTIAL INFORMATION) ON NEW PAGE - -

<p style="text-align: center;">Attachment A Employment History</p>
--

Please start with your current employment or most recent employment, self-employment, and Periods of unemployment for the last 20 years preceding the filing of this Application.

Current or Last Employer: Rodriguez Law Offices, P.C.

Phone Number: 702-320-8400

Address: 10161 Park Run Drive, Suite 150; Las Vegas, NV 89145

From: March 2004 **To:** Present

Supervisor's Name: Self

Supervisor's Job Title: President

Your Title: President

Specific Duties: Attorney.

Licensed before the U.S. Supreme Court, and all federal and state courts in Nevada. Practice includes general liability litigation on behalf of corporations, national retailers, local businesses, and individuals. Extensive litigation experience in trials, hearings, mediations, arbitrations, and appeals in all state and federal courts in Nevada. Clients include A Cab Taxicab corporation; the UMC Physicians Bargaining Unit; Creative Surfaces, Inc.; Henderson Roofing & Patio, LLC; LCDC Laundromats; Universal Color Graphics; Nevada Official Courier. Have litigated cases before numerous Federal and State regulatory agencies including the Nevada Transportation Authority; Nevada Taxicab Authority; Employee Management Relations Board; Nevada Public Employees Retirement System Board; National Labor Relations Board; United States Equal Employment Opportunity Commission; Nevada Equal Rights Commission; and Workers Compensation Hearing and Appeals Divisions.

Reason for Leaving:

Not applicable

Previous Employer: Flangas McMillan Law Group

Phone Number: 702-307-9500

Address: 3275 S. Jones Blvd., #105; Las Vegas, NV 89146

From: April 2003 **To:** February 2004

Supervisor's Name: Gus Flangas, Esq. and John McMillan, Esq.

Supervisor's Job Title: Managing Partner

Your Title: Partner

Specific Duties: Attorney. Practice included defense of business claims, employment and labor claims, general liability litigation on behalf of local businesses, national retailers and corporations.

Reason for Leaving: Started my own lawfirm.

Previous Employer: Morris Polich & Purdy LLP

Phone Number: 702-862-8300

Address: 3800 Howard Hughes Parkway #500; Las Vegas, NV 89169

From: July 2000 **To:** April 2003

Supervisor's Name: Nicholas Wieczorek, Esq.

Supervisor's Job Title: Las Vegas Managing Partner

Your Title: Attorney

Specific Duties: Responsible for approximately 50 defense files pertaining to professional liability, employment law, business liability defense and real estate law.

Reason for Leaving: Offer of partnership at Flangas McMillan Law Group.

Previous Employer: Greenman, Goldberg, Raby & Martinez

Phone Number: 702-384-1616

Address: 601 S. Ninth Street; Las Vegas, NV 89101

From: September 1999 **To:** July 2000

Supervisor's Name: Gabriel Martinez, Esq. and Aubrey Goldberg, Esq.

Supervisor's Job Title: Partners

Your Title: Attorney

Specific Duties: Responsible for approximately 500 plaintiff files including employment and workers compensation claims and personal injury claims. Litigated all aspect of cases from administrative levels to the Nevada Supreme Court.

Reason for Leaving: Better offer to return to former firm, Morris Polich & Purdy LLP.

Previous Employer: Morris Polich & Purdy, LLP

Phone Number: 702-862-8300

Address: 3800 Howard Hughes Parkway #500; Las Vegas, NV 89169

From: January 1999 **To:** September 1999

Supervisor's Name: Nicholas Wieczorek, Esq.

Supervisor's Job Title: Las Vegas Managing Partner

Your Title: Attorney

Specific Duties: Responsible for approximately 50 defense files pertaining to professional liability, employment law, business liability defense and real estate law.

Reason for Leaving: Better job offer at Greenman, Goldberg, Raby & Martinez.

Previous Employer: England & Associates

Phone Number: 702-385-3300

Address: 630 S. Third Street; Las Vegas, NV 89101

From: July 1998 **To:** December 1998

Supervisor's Name: Kathleen England, Esq.

Supervisor's Job Title: Owner

Your Title: Attorney

Specific Duties: Practiced exclusively employment law. Files pertained to harassment claims, wrongful terminations, ADA claims

Reason for Leaving: Better job offer at Morris Polich & Purdy, LLP

Previous Employer: Beckley, Singleton, Jemison, Cobeaga & List

Phone Number: no longer in existence

Address: 530 Las Vegas Blvd; Las Vegas, NV 89101

From: August 1997 **To:** July 1998

Supervisor's Name: Mitchell Cobeaga, Esq., Daniel Polsenberg, Esq., Elizabeth Gonzalez, Esq., Lawrence Epstein, Esq., Daniel Waite, Esq., and Tamela Kahle, Esq. There were other partners, but I worked primarily for these lawyers.

Supervisor's Job Title: Partners

Your Title: Attorney

Specific Duties:

Practiced general civil litigation primarily defense and appeals, under the supervision of the above named law partners.

Reason for Leaving: Better job offer with Attorney Kathleen England.

Previous Employer: I was in lawschool from 1994-1997, and have listed employment during lawschool in Response #10.

Response to Question 45:

I believe I have the educational credentials, the professional experience, and the temperament to be a fair and impartial judge. I would be honored to assume the seat previously held by Judge Susan Scann. I knew Judge Scann for many years, and had cases against her in my early years. I always found her to be a pleasant person no matter the circumstances. That is also what I strive to do. I strive to be pleasant, respectful, and courteous no matter the circumstances, or the person with whom I am dealing. It is sometimes difficult to maintain this composure, as litigation can be prolonged, and very antagonistic. Throughout my career and presently, I continue to represent both Plaintiffs and Defendants. I have found that my workload keeps me balanced, and reminds me that there are two sides to every story. In my recent years serving as an Arbitrator and a Judge Pro-Tem, I always give the parties an opportunity to be heard, and try to convey that I have reviewed their submissions and listened to their side.

I work very hard on each case that I handle, as I recognize that each particular case is important to that client. I do not take shortcuts, and am diligent to make sure that things are done right. I have the best educational background having had the privilege of attending Princeton University, Stanford University, and Tulane Law School. I worked very hard to gain admission to these universities, but of course, have my family to thank for their support and guidance. I am the first generation of my family to attend college, and my sisters followed behind me also attending Princeton University and Tulane University. I appreciate my position in life, and recognize that others do not always have such good fortune. I therefore always try to keep an open mind, and place myself in the person's position before making a decision that may affect them.

After practicing 19 years of active civil litigation, I am well-versed in all aspects of civil procedure and the Court system. I have handled hundreds of cases that include personal injury, insurance defense, contract cases, workers compensation, employment cases, and all the “weird ones” as my colleagues jest. I have friendly and good working relationships with Plaintiffs attorneys and Defense attorneys, and recognize that in our bar association we still run into the same people over and over again. Although I am diligent in my representation of my client, I usually maintain a good relationship and mutual respect with opposing counsel upon conclusion of the matter.

I have had little experience with family law issues. I had to learn the basic procedure when I handled a divorce proceeding pro bono through Nevada Legal Aid, and the client was very grateful. Similarly, I only handled small criminal matters such as DUI’s when I worked for Greenman Goldberg Raby & Martinez. I have handled traffic violations throughout my career for clients, and as part of personal injury matters.

I believe I can learn the areas with which I am not familiar quickly. As an example, I recently started sitting *pro tem* for Judge Bitá Yeager who primarily handles eviction actions. This was an area with which I was unfamiliar. I dedicated myself to becoming familiar with the statutes, and under the tutelage of Judge Yeager was able to take the bench quickly. I rely upon my knowledge and expertise from the other civil areas, and apply them to the particular statutes governing evictions.

In my career, I have dealt with people across the nation and from all walks, and usually in an adverse situation taking their depositions. I have deposed high ranking government officials in Washington, D.C., adverse medical specialists in various states, and corporate heads

of large companies. To my astonishment, I have received compliments upon the conclusion of the deposition by these persons as to my professionalism and demeanor, despite it being an adverse proceeding. Similar to my practice as an attorney, I will strive to do the best I can as a District Court judge if selected. I thank you for consideration of my application.

DISCLOSURE AND AUTHORIZATION FORM TO OBTAIN CONSUMER REPORTS FOR EMPLOYMENT PURPOSES

Please Read Carefully Before Signing the Authorization

DISCLOSURE

In considering you as an applicant for district judge, the Administrative Office of the Courts, on behalf of the Commission on Judicial Selection, ("the Company") may request and rely upon one or more consumer reports or investigative consumer reports about you that we obtain from a consumer reporting agency, such as IntelliCorp Records, Inc.

IntelliCorp Records, Inc. can be contacted by mail at 3000 Auburn Dr, Suite 410; Beachwood, OH 44122; or phone: 1-888-946-8355; or website: www.intellicorp.net.

For explanation purposes:

- a "consumer report" is a written, oral or other communication of any information by a consumer reporting agency bearing on your credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in making an employment-related decision about you. Such information may include, for example, credit information, criminal history reports, or driving records; and
- an "investigative consumer report" is a consumer report in which information on your character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with your prior employers, neighbors, friends, or associates, or with others who may have knowledge concerning any such items of information. In the event an investigative consumer report is requested about you, you are entitled to additional disclosures regarding the nature and scope of the investigation requested, as well as a written summary of your rights under the Fair Credit Reporting Act ("FCRA").

Under the FCRA, before the Company can obtain a consumer report or investigative consumer report about you for employment purposes, we must have your written authorization. Before we take any action on the basis, in whole or in part, of information in that report, you will be provided a copy of that report, the name, address, and telephone number of the consumer reporting agency, and a summary of your rights under the FCRA.

You have the right to make a request to **IntelliCorp Records, Inc.**, upon proper identification, regarding the nature and substance of all information in its files on you at the time of this request, including sources of information, and the recipients of any reports on you that **IntelliCorp Records, Inc.**, has previously furnished within the 2-year period preceding the request.

AUTHORIZATION

I have read and understand the foregoing Disclosure, and authorize the Administrative Office of the Courts, on behalf of the Commission on Judicial Selection, to obtain and rely upon consumer reports or investigative consumer reports concerning me. By my signature below, I authorize the Company to obtain any such reports and to share the information received with any person involved in their decision about me.

I also agree that this Disclosure and Authorization in original, faxed, photocopied, or electronic (including electronically signed) form will be valid for any consumer reports or investigative consumer reports that may be requested about me by or on behalf of the Company.

Esther C. Rodriguez

Printed Name

EC Rodriguez

Applicant Signature

9/19/16

Date

STATE OF NEVADA

COUNTY OF

CLARK

)
) ss.
)

The undersigned, upon oath, deposes and states as follows: That (s)he is the person whose signature appears herein above on the instrument entitled "Application", that (s)he has read the same and is aware of the contents thereof; that the same is true and correct according to the best knowledge and belief of the undersigned; and that (s)he executed the same freely and voluntarily, and for the purpose of inducing the Nevada Commission on Judicial Selection to give favorable consideration to this Application for judicial office.

EC Rodriguez

Signature of Applicant

Esther C. Rodriguez

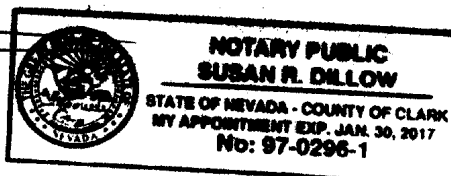
Printed Name of Applicant

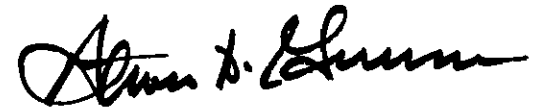
Email address: esther@rodriguezlaw.com

SUBSCRIBED and SWORN to before me this 19th of September, 2016

Ann R. Dillow

Notary





CLERK OF THE COURT

MSJ
Esther C. Rodriguez, Esq.
Nevada Bar No. 6473
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
info@rodriguezlaw.com
Telephone: (702) 320-8400
Facsimile: (702) 320-8401
Counsel for Defendants A Cab, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

DEJA VU SHOWGIRLS OF LAS VEGAS, LLC,
a Nevada limited liability company, LITTLE
DARLINGS OF LAS VEGAS, LLC, a Nevada
limited liability company,

Plaintiff,

vs.

SAM ALDABAGH d/b/a THE CAN CAN
ROOM; TWO M, INC., a Nevada corporation
d/b/a DIAMOND CABARET; C.P. FOOD &
BEVERAGE, INC., a Nevada corporation d/b/a
CLUB PARADISE; D.I. FOOD & BEVERAGE
OF LAS VEGAS, LLC, a Nevada limited liability
company d/b/a SCORES; SGC INVESTMENTS
HOLDINGS, LLC a Nevada limited liability
company d/b/a SEAMLESS; K-KEL, INC., a
Nevada corporation d/b/a SPEARMINT RHINO;
SHAC, LLC, a Nevada limited liability company
d/b/a SAPPHIRE; ALBERT M. MERANTO d/b/a
PENTHOUSE EXECUTIVE GIRLS; O.G.
ELIADES, A.D., LLC, a Nevada limited liability
company d/b/a OLYMPIC GARDENS;
PALOMINO CLUB INC., a Nevada corporation
d/b/a PALOMINO CLUB; D.2801 WESTWOOD,
INC., a Nevada corporation d/b/a TREASURES;
SUTTER STREET INVESTMENTS, LLC, a
Nevada limited liability company d/b/a SHERI'S
CABARET; A CAB LLC, a Nevada limited
liability company; ACE CAB CO., INC., a Nevada
corporation; UNION CAB CO., a Nevada
corporation; A NLV CAB CO, a Nevada
corporation; NEVADA CHECKER CAB
CORPORATION, a Nevada corporation;
HENDERSON TAXI, a Nevada corporation;
LUCKY CAB CO., a Nevada corporation;

Case No.: A 574136
Dept. No. XI

DEFENDANT A CAB, LLC'S
MOTION FOR SUMMARY
JUDGMENT

1 SUN CAB INC., a Nevada corporation;
2 NEVADA STAR CAB CORPORATION, a
3 Nevada corporation; VEGAS-WESTERN CAB,
4 INC., a Nevada corporation; WHITTLESEA
5 BLUE CAB CO., INC., a Nevada corporation;
6 NEVADA YELLOW CAB CORPORATION, a
7 Nevada corporation; DOE EMPLOYEES 1-500
8 ROE CORPORATIONS 1-10; ROE LIMITED
9 LIABILITY COMPANIES 1-10; DOES 1-500;
10 DOE TAXICAB DRIVERS 1-500;
11
12 Defendants.


Case No.: A 574136
Dept. No. XI

13 **DEFENDANT A CAB, LLC'S MOTION FOR SUMMARY JUDGMENT**

14 Defendant A Cab, LLC ("A Cab"), by and through its attorney, Esther C. Rodriguez, Esq., of
15 RODRIGUEZ LAW OFFICES, P.C., hereby moves this Court for summary judgment and, in the
16 alternative for dismissal of Déjà Vu Showgirls of Las Vegas, LLC's ("Déjà Vu") and Little Darlings
17 of Las Vegas, LLC's ("Little Darlings," and together with Déjà Vu, "Plaintiffs") Second
18 (Respondeat Superior), Third (Civil Conspiracy), and Fifth (Injunctive Relief) claims for relief. This
19 Motion is based upon the pleadings and papers filed in this case, the following Memorandum of
20 Points and Authorities, and any oral argument allowed by the Court.

21 DATED this 30 day of November, 2012.

22 **RODRIGUEZ LAW OFFICES, P. C.**

23 By: 
24 Esther C. Rodriguez, Esq.
25 Nevada State Bar No. 6473
26 10161 Park Run Drive, Suite 150
27 Las Vegas, Nevada 89145
28 Attorneys for A Cab LLC

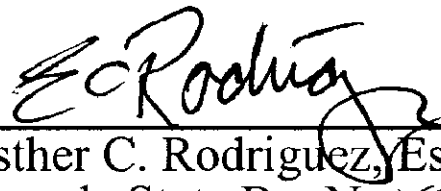
1 **NOTICE OF MOTION**

2 **TO: ALL INTERESTED PARTIES.**

3 PLEASE TAKE NOTICE that Defendant will bring the foregoing **Motion for Summary**
4 **Judgment** on for hearing on the ^{3RD} day of ²⁰¹³ JANUARY, ~~2012~~, at the hour of ^{8:30} a.m./p.m.
5 in Dept. XI, or as soon thereafter as counsel may be heard.

6 DATED this 30 day of November, 2012.

7 **RODRIGUEZ LAW OFFICES, P. C.**

8
9 By: 
10 Esther C. Rodriguez, Esq.
11 Nevada State Bar No. 6473
12 10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Attorneys for A Cab LLC

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I.**

15 **INTRODUCTION**

16 There is not one scintilla of evidence supporting the claims asserted against Defendant A
17 Cab. A Cab was wrongly brought into this lawsuit either mistakenly or with dubious purposes.
18 Regardless of the motive, after a year and half of discovery, Plaintiffs have not obtained any
19 evidence to support their claims against A Cab. In fact, with each step in the discovery process,
20 whether it be with written discovery, on-site document inspections, expert reports, witness and party
21 depositions, it became clearer and clearer that A Cab has no place in this lawsuit. Each of Plaintiffs'
22 witnesses and party representatives have stated they either have no knowledge of any wrongdoing by
23 A Cab, or the acts of A Cab were correctly done.

24 Nevertheless, Plaintiffs have not dismissed the complaint, and have forced A Cab to defend
25 itself against this frivolous claim. Giving Plaintiffs the benefit of the doubt that they merely "cast a
26 net" against all taxicab companies in filing their initial complaint, Plaintiffs continued to obtain
27 blatant and clear evidence that it was wrong to file suit against A Cab. Yet here stands A Cab still a
28 party to this litigation, as to date there has been no voluntary dismissal by the Plaintiffs.

1 It should be noted that not all taxicab companies operating in Las Vegas were sued in this
2 action; in fact, Plaintiffs obtained and produced investigative reports demonstrating alleged diversion
3 by Desert Cab, yet Plaintiffs never named Desert Cab as a Defendant. However, without any
4 evidence of any wrongdoing by A Cab, Plaintiffs did file suit against A Cab. Furthermore, not one
5 of Plaintiffs' representative could explain why A Cab was sued.¹

6 The complete absence of any evidence supporting Plaintiffs' Complaint is detailed in this
7 Motion. As discovery is now closed, it is doubtful Plaintiffs can now produce any evidence to
8 support their claims and why this matter should proceed to a jury. In the absence of a complete
9 dismissal by this Court, A Cab would seek dismissal of select causes of action.

10 Specifically, Plaintiffs have brought this civil action against A Cab and other taxicab
11 defendants for alleged violations of NRS and NAC 706 when they filed, brought, and still maintain
12 an administrative action against those same parties over the same factual claims. Plaintiffs' chosen
13 judicial forum is limited to the proceedings in front of District Court Department III, the Honorable
14 Douglas Herndon, not in front of the judge and jury in this courtroom.

15 Plaintiffs' administrative action and Petition For Judicial Review against A Cab and other
16 taxicab defendants, which is still pending in Department III, clearly establishes that Plaintiffs have
17 failed to exhaust their administrative remedies, are barred from initiating this civil action, and lack a
18 private right of action against A Cab (and other taxicab company defendants) for claims alleging, or
19 derived from, violations of NRS and NAC 706. As a result, Plaintiffs' claims for Civil Conspiracy,
20 Respondeat Superior and Injunctive Relief against A Cab, specifically pled as reliant on NRS and
21 NAC 706, should be dismissed as a matter of law at this time under applicable NRCP 12 or NRCP
22 56 standards.

23 II.

24 FACTUAL AND PROCEDURAL BACKGROUND

25 On October 21, 2008, Plaintiffs filed an administrative complaint with the Taxicab Authority
26 against various taxicab companies, including A Cab, alleging violations of NRS 706.8846 and NAC

27
28 ¹ The referenced portions of the depositions of Harry Mohny and Gary Nemeth have not been
transcribed as of this writing. These will be supplemented upon receipt and under seal.

1 706.552 for the purported "diversion" of customers from their selected destination (the
2 "Administrative Action").² The following day, on October 22, 2008, Plaintiffs filed this lawsuit in
3 District Court making similar factual allegations only against various adult entertainment
4 establishments and their employees (the "Civil Action").³ Plaintiffs specifically chose not to file any
5 claims against the taxicab companies in the State Action.

6 Nearly two years later, Plaintiffs filed a Fourth Amended Complaint on April 30, 2010 and
7 brought claims against the same taxicab companies as defendants in the State Action prior to
8 resolution of the Administrative Action. The Fourth Amended Complaint is virtually identical to the
9 administrative complaint with respect to the taxicab companies and alleges the same violations of
10 NRS 706.8846 and NAC 706.552 for the purported "diversion" of customers.⁴ At the same time,
11 Plaintiffs never dismissed the Administrative Action and, in fact, continued to pursue it.

12 On May 17, 2010, the Administrator of the TA dismissed Plaintiffs' complaint against the
13 Defendants for lack of probable cause.⁵ In his opinion, the Administrator specifically informed
14 Plaintiffs that "in the event that you are not satisfied with this recommendation, you have the right to
15 have this matter reviewed by the Taxicab Authority Board under NAC 706.9228."⁶ Plaintiffs
16 supplemented the administrative complaint, which was evaluated and again dismissed by the TA
17 Administrator.⁷

18 Pursuant to NRS 706.9228, Plaintiffs then appeared in front of the TA on August 24, 2010
19 and argued their complaint.⁸ The TA considered the complaint, conducted a hearing, and ultimately
20
21

22 ²See Administrative Complaint attached as Exhibit A (without the 265 pages of exhibits).

23 ³See Complaint attached as Exhibit B.

24 ⁴See Fourth Amended Complaint attached as Exhibit C (without exhibits).

25 ⁵See Exhibit D.

26 ⁶*Id.*, at 2.

27 ⁷See August 16, 2010 letter from Gordon Walker attached hereto as Exhibit E.

28 ⁸August Hearing transcript is attached hereto as Exhibit F.

1 dismissed the complaint against the certificate holders, including Defendant A Cab.⁹ Plaintiffs
2 appealed that TA decision to the NTA, the appellate agency body for the TA, and the NTA affirmed
3 the TA decision.¹⁰ Plaintiffs then filed a Petition For Judicial Review in Clark County District
4 Court.¹¹ That Petition For Judicial Review remains pending in Department 3 of the Clark County
5 District Court.

6 As the Court will recall, A Cab previously joined in a motion to dismiss the Fourth Amended
7 Complaint. That motion was denied on February 3, 2011 on the limited basis that Plaintiffs' tort
8 claim for commercial disparagement was subject to the Court's jurisdiction.¹² A Cab brings this
9 motion based upon legal issues never addressed by the Court, recently uncovered during deposition
10 discovery of Plaintiffs' PMK designees¹³ and a complete review of these proceedings, some of which
11 took place without A Cab's involvement.

12 III.

13 STANDARD OF REVIEW

14 A. Summary judgment

15 Summary judgment shall be granted when there are no genuine issues of material fact and the
16 moving party is entitled to judgment as a matter of law. NRCP 56(c). The moving party initially
17 bears the burden of proving the absence of genuine issues of fact. *Butler v. Bogdanovich*, 101 Nev.
18 449, 705 P.2d 662 (1985). Once that burden has been carried, the responding party must come
19 forward with evidence creating genuine and triable issues of fact. *Bird v. Casa Royale*, 97 Nev. 67,
20 624 P.2d 269 (1981).

21 "Although the party opposing a motion for summary judgment is entitled to all favorable
22

23 ⁹September 2, 2010 Order attached hereto as Exhibit G.

24 ¹⁰See Notice of Appeal attached as Exhibit H; *See also* NTA Order attached as Exhibit I.

25 ¹¹See Petition For Judicial Review attached as Exhibit J. As of this writing, there is a Motion for
26 Reconsideration on calendar for December 5, 2012 in Department III.

27 ¹²See February 10, 2011 Order attached as Exhibit K.

28 ¹³Taxicab company defendants noticed these depositions many months ago. They only recently took
place due to accommodations requested by Plaintiffs. In fact, Mr. Mohnney's deposition has not even
been completed as of this writing.

1 inferences from the pleadings and documentary evidence, the opposing party 'is not entitled to build
2 a case on the gossamer threads of whimsy, speculation and conjecture.'" *Collins v. Union Fed.Sav. &*
3 *Loan Ass'n.*, 99 Nev. 284, 302; 662 P.2d 610, 621 (1983) (citing *Mullis v. Nevada National Bank*, 98
4 Nev. 510, 654 P.2d 533 (1982), and *Hahn v. Sargent*, 523 F.2d 461, 468 (1st Cir. 1975), *cert. denied*,
5 425 U.S. 904 (1976)). In order to avoid the requested relief, Plaintiff must come forward with
6 specific facts on which this Court could rule in its favor on the issues addressed in this motion.
7 *Hickman v. Meadow Wood Reno*, 96 Nev. 782, 617 P.2d 871 (1980). Here, the motion must be
8 granted because there are no genuine issues of fact which remain for trial and Defendant A Cab is
9 entitled to judgment as a matter of law.

10 In addition, NRCP 56(a) expressly provides that a party may move for summary judgment
11 "upon all or any part" of a claim or defense. Partial summary judgment may be granted on an issue of
12 law in the case, in spite of the existence of genuine issues of material fact which preclude summary
13 judgment upon the entire case.¹⁴ In this case, dismissal and partial summary judgment are
14 appropriate with respect to any and all claims surrounding alleged violations of NRS and NAC 706
15 by Defendant A Cab.

16 **B. Dismissal**

17 A motion to dismiss under Rule 12(b)(1) of the Nevada Rules of Civil Procedure may be
18 utilized when a lack of subject matter jurisdiction is apparent on the face of the complaint.¹⁵ Under
19 Nevada law, the failure of a party to exhaust its administrative remedies prior to commencing an
20 action in the district court divests the court of jurisdiction and mandates dismissal of the action.¹⁶
21 Similarly, a defendant is entitled to dismissal of a claim when a plaintiff fails to state a claim upon
22 which relief can be granted.¹⁷

25 ¹⁴*See Onque v. Cox Commc'ns Las Vegas, Inc.*, 2006 U.S. Dist, LEXIS 67153,*8 (D.Nev. Sept. 15,
26 2006)

27 ¹⁵*Girolla v. Rousille*, 81 Nev. 661,663, 408 P.2d 918, 919 (1965).

28 ¹⁶*Nevada v. Scotsman Manufacturing Co.*, 109 Nev. 252, 255, 849 P.2d 317, 319 (1993).

¹⁷*See* NRCP 12(b)(5)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV.

LEGAL ARGUMENT

A. There is No Evidence Supporting Plaintiffs' Claims Against A Cab.

Plaintiffs' claims against A Cab are the epitome of a case built on the gossamer threads of whimsy, speculation and conjecture. Each document and each witness has in fact supported a complete dismissal of A Cab from this matter:

1. **Plaintiffs' Documents of Alleged Diversion**

Plaintiffs have put forth as the basis of their allegations more than 200 pages of investigative reports which purport to capture the evidence of diversion and disparagement¹⁸. From these multitudes of pages, there is only ONE (1) report that involves an A Cab driver.¹⁹ In this report, the A Cab driver, Dana, is investigated and is deemed by the Investigator to be performing at a 100%; in other words, no diversion and no disparagement occurred. Plaintiffs' investigator documented the ride indicating, **"Dana asked where we wanted to go and we asked to be taken to Little Darlings. Dana immediately began driving toward Little Darlings without making any disparaging comments about the club or attempting to redirect us to another club."** *Id.*, p.2.

2. **Plaintiffs' Investigators**

Brent Sprecher is Plaintiffs' investigator who investigated A Cab for conduct constituting diversion or disparagement. He testified in his deposition:

Q. BY MS. RODRIGUEZ: Okay. So it would be fair to say that any interaction you had with an A Cab driver would be contained in report #19?

A. Solely contained in this report, correct.

Q. Okay. So having a look at #19, can you tell me what that survey total -- can you interpret what that means for me, the 100.00% (2/2)?

A. That means that the -- let me see. Oh, Dana.

¹⁸ This is Plaintiffs' alleged proof; Defendant does not waive its objections as to the admissibility of the investigative reports at trial.

¹⁹ Plaintiffs investigation report attached as Exhibit L.

1 **THE WITNESS:** I was going to say Dana did her -- he -- Dana did his job.

2 **Q. BY MS. RODRIGUEZ:** Okay. What does that mean in terms of "Dana did his job"?

3 **A.** He did not attempt to redirect me to a destination that wasn't my original request and he did
4 not make any disparaging remarks about my original request, which was Little Darlings.

5 **Q.** Okay. So in your entire investigation dealing with A Cab, you found no A Cab driver that
6 attempted to redirect passengers, is that correct?

7 **A.** That is correct.

8 **Q.** And you found no A Cab driver that made disparaging remarks about Little Darlings or Deja Vu?

9 **A.** Correct.²⁰

10 **3. Plaintiffs' Written Responses to Discovery**

11 In their written discovery responses, Plaintiffs' identified all evidence they have supporting
12 their allegations against A Cab.²¹ Little Darlings identified one incident involving an A Cab driver
13 named Dana. However, pursuant to Plaintiffs' investigator, Dana did everything right and did not
14 attempt to divert passengers.²² Deja Vu identified one incident allegedly involving an A Cab driver
15 named Tony. However, Plaintiffs' expert confirmed that Tony was not an employee of A Cab.²³

16 **4. Plaintiffs' Experts**

17 Plaintiffs' expert, Sharon McNair, CPA, along with Barbara McCrimmon, CPA, and
18 Christine Botzenhardt, conducted multiple inspections of A Cab's records on the premises of A Cab.
19 In their final analysis, they concluded no wrongdoing on the part of A Cab.²⁴

20 **5. Plaintiffs' Persons Most Knowledgeable**

21 Harry Mohny and Gary Nemeth were produced as the Persons Most Knowledgeable for
22 purposes of a deposition. The deposition of Harry Mohny has not been completed as of this

23 _____
24 ²⁰Sprecher deposition pgs. 206:10-25 thru 207:1-3; 207:22-25 thru 208:1-3, Exhibit M.

25 ²¹See Little Darlings of Las Vegas, LLC's Answers to Interrogatories, Exhibit N and Deja Vu
26 Showgirls of Las Vegas, LLC's Answers to Interrogatories, Exhibit O, specifically Answers No. 1.

27 ²²See Exhibit M.

28 ²³See McCrimmon, Ltd. Analysis for A Cab, Exhibit P.

²⁴See Exhibit P.

1 writing, and pertinent items have not been transcribed. The deposition transcript of Gary Nemeth as
2 well has been ordered, but not received. Both transcripts will be supplemented to the Court when
3 received.

4 Several questions were asked to each of these witnesses specific to A Cab. Neither Mr.
5 Mohny nor Mr. Nemeth had knowledge of any evidence that A Cab refused to transport passengers
6 to Deja Vu or Little Darlings, nor any evidence that A Cab never transported passengers to either
7 club. Furthermore, when asked specifically about the communications that support the allegations in
8 the complaint against A Cab as alleged in their discovery responses, neither witness had personal
9 knowledge of any phone calls, emails, text messages, or communications with dispatchers, drivers or
10 managers of A Cab evidencing conspiracy.²⁵

11 **B. Broad Generalizations Are Not Applicable To A Cab and Are Not Sufficient To Survive**
12 **Summary Judgment.**

13 Plaintiffs have not produced one item of evidence supporting its claims against A Cab.
14 Plaintiffs have made generalizations against the cab industry as a whole. However, what has
15 repeatedly been explained to Plaintiffs (and a fact Plaintiffs could have easily discovered with a
16 minimal amount of research) is that A Cab is an entirely geographically restricted company.

17 Since obtaining its license (Certificate of Public Convenience and Necessity) in May 2001, A
18 Cab has been limited to servicing west of Interstate 15.²⁶ This essentially means that A Cab is
19 prohibited from picking up customers at any of the Defendant Clubs (and Plaintiffs' clubs for that
20 matter, too). This includes Palomino, Treasures, Spearmint Rhino, DejaVu, and Little Darlings.
21 Therefore, all the allegations asserted about drivers lingering in the parking lots of clubs to shuttle
22 customers to clubs that pay more for dropping off patrons simply do not apply to A Cab.

23 It is clear from all of Plaintiffs' witnesses that A Cab should not be in this lawsuit. Plaintiffs'
24 continued insistence in keeping A Cab in this case after obtaining confirmation of evidence contrary
25 to the allegations fall within the purview of NRCP Rule 11 and the filing of frivolous claims.

26
27 ²⁵See Exhibits N and O, Answers to Interrogatory No. 7; relevant portions of the depositions of Harry
28 Mohny and Gary Nemeth will be supplemented upon receipt.

²⁶Certificate of Public Convenience and Necessity # CPCT 1052, Exhibit Q.